

METROPOLITAN AIRPORTS COMMISSION

ORDINANCE No. 125

HOTEL FACILITY CHARGE ORDINANCE



Adopted by Commission: April 17, 2017
Effective Date: July 1, 2017

173005

METROPOLITAN AIRPORTS COMMISSION

ORDINANCE NO. 125

HOTEL FACILITY CHARGE (HFC) ORDINANCE

An Ordinance to promote and conserve the public safety, health, peace, convenience, and welfare; to establish uniform fees for hotel Customers to fund Hotel Facilities at the Minneapolis-St. Paul International Airport consistent with Minnesota Statutes § 473.651; establishing payment procedures; and prescribing the penalty for violation thereof.

The Metropolitan Airports Commission does ordain:

SECTION 1 – DEFINITIONS

- 1.1 **Airport**. Minneapolis-St. Paul International Airport, Wold-Chamberlain Field, a public airport operated by the Metropolitan Airports Commission and located in Hennepin County, Minnesota.
- 1.2 **Capital Costs**. That portion of MAC project costs, including, but not limited to, demolition, construction, debt service, capitalized interest, bond insurance, underwriting, bond issuance, accrued interest, and contingencies, associated with the construction of Hotel Facilities that are associated with use by a Hotel Company or its Customers.
- 1.3 **Capital Maintenance Costs**. That portion of all costs associated with engineering, materials, labor, testing, repairs, and inspections needed to operate, maintain, refurbish, and improve the Hotel Facilities that are associated with use by a Hotel Company or its Customers.
- 1.4 **Commission or MAC**. The Metropolitan Airports Commission, a public corporation organized and operating pursuant to Chapter 500, Laws of Minnesota 1943 and amendments thereto.
- 1.5 **Customer**. Any person that rents one or more rooms or otherwise purchases goods or services from a Hotel Company or otherwise makes use of a hotel.
- 1.6 **Executive Director/CEO**. The Commission's chief executive officer or a designated representative.
- 1.7 **Extraordinary Costs**. Costs incurred by MAC or a Hotel Company for improvements to the overall operation of Hotel Facilities including, but not limited to: facility improvements that, in MAC's opinion, improve the overall operation of Hotel Facilities, professional consulting costs associated with hotel selection processes, and common area maintenance costs. Only projects or improvements costing \$50,000 or more may qualify as Extraordinary Costs.
- 1.8 **Hotel Access Road**. Any road(s) used by a Hotel Company or Customers to access a hotel.
- 1.9 **Hotel Advertising Costs**. Costs incurred by MAC for promotion of an on-Airport hotel.

- 1.10 Hotel Company or Company. Any company that has a lease or concession agreement with the Commission for the purpose of selling lodging to Customers on Airport who originate on Airport property. This definition applies to any company that has a lease or concession agreement on the date this Ordinance takes effect and any new entrants from the date they begin on-Airport operations.
- 1.11 Hotel Facilities. Facilities located on Airport property dedicated for use by the Hotel Company or its Customers including, but not necessarily limited to, Parking Ramps, Skyways, and Hotel Access Roads.
- 1.12 Hotel Facility Charge. A percentage charge on that portion of gross receipts charged for room rentals applicable to all Customers.
- 1.13 Operating and Maintenance Costs. That portion of costs incurred by the Commission to operate and maintain Hotel Facilities that are associated with use by a Hotel Company or its Customers.
- 1.14 Parking Ramp. The Post Office Parking Ramp, together with any other existing or future Hotel Facilities used for parking, valet service, and/or related purposes.
- 1.15 Post Office Parking Ramp. The parking ramp attached to the post office located at 5001 Northwest Drive, St. Paul, MN 55111.
- 1.16 Skyway. Existing and future skyway(s) providing access from T1-Lindbergh to and from a hotel, including associated security checkpoint facilities.

SECTION 2 – PURPOSE

The purpose of this Ordinance is to impose a rate-based Customer fee on the gross receipts from room rentals to pay for Capital Costs, Capital Maintenance Costs, Operating and Maintenance Costs, and Extraordinary Costs as set forth in this Ordinance. The Hotel Facility Charge enables the Commission and a Hotel Company to provide convenient, on-Airport facilities to lodge the traveling public in Airport locations as determined by the Commission.

SECTION 3 – FINANCING OF HOTEL FACILITIES

3.1. Parking Ramp Capital Costs

Parking Ramp Capital Costs will be financed with the Hotel Facility Charge over an estimated 37 years projected to begin in 2018.

3.2. Parking Ramp Capital Maintenance Costs and Operating and Maintenance Costs

The Hotel Facility Charge will be used to fund annual Parking Ramp Capital Maintenance Costs and Parking Ramp Operating and Maintenance Costs.

3.3. Skyway Capital Costs

The Skyway Capital Costs will be financed with the Hotel Facility Charge over an estimated 37 years projected to begin in 2018.

3.4 Skyway Capital Maintenance Costs and Skyway Operating and Maintenance Costs

The Hotel Facility Charge will be used to fund annual Skyway Maintenance Costs and Skyway Operating and Maintenance Costs.

3.5 Hotel Access Road Capital Costs

The Hotel Access Road Capital Costs will be financed with the Hotel Facility Charge over an estimated 37 years projected to begin in 2018.

3.6 Hotel Access Road Capital Maintenance Costs and Operating and Maintenance Costs

The Hotel Facility Charge will be used to fund annual Road Maintenance Costs.

3.7 Hotel Advertising Costs

The Hotel Facility Charge will be used to fund annual Hotel Advertising Costs.

3.8 Payment or Reimbursement of Extraordinary Costs

The Commission may pay third parties directly or reimburse a Hotel Company for Extraordinary Costs through money collected via the Hotel Facility Charge. Payment and/or reimbursement of Extraordinary Costs under this Ordinance shall be at MAC's sole discretion and shall require Commission approval. To be eligible for reimbursement under this provision, a Hotel Company's Extraordinary Costs must be incurred for goods and services provided by a third party vendor or contractor and documented to MAC's satisfaction.

Extraordinary Costs shall be distributed to each Hotel Company in one payment, within a reasonable time after submission of the Hotel Company's conforming cost statement. MAC reserves the right to audit all costs as to qualification and amount. Every payment or reimbursement of Extraordinary Costs is subject to Commission approval.

3.9 Other Capital Maintenance Projects

The Hotel Facility Charge may also include payment for approved Capital Maintenance Costs incurred by MAC through its capital improvement program or other similar capital programs.

SECTION 4 – HOTEL FACILITY CHARGE

4.1 Collection of Hotel Facility Charge

The Hotel Company shall charge and collect the same Hotel Facility Charge from all Customers in the form of a percentage of that portion of gross receipts charged for room rentals.

4.2 Designation on Bill and Receipt

A Hotel Company shall separately designate the Hotel Facility Charge on the Customer's bill and receipt. It shall be labeled a "Hotel Facility Charge." No other designation with respect to the Hotel Facility Charge shall be permitted on a bill or receipt without the prior written approval of the Executive Director/CEO.

4.3 Amount of Hotel Facility Charge and Rate Adjustment

a. Initial Amount

The Hotel Facility Charge shall be 6.5% of that portion of the gross receipts from room rentals, beginning on the effective date of this Ordinance.

b. Future Adjustments and Minimum Amount

Starting July 1, 2022, or anytime thereafter, the Executive Director/CEO may, at his discretion, request that the amount of the HFC be recalculated based on unfunded costs and projected gross room rentals to be effective January 1 the following year.

The Executive Director/CEO may only adjust the HFC once every five years. The Commission shall approve the adjusted HFC and have the sole and final determination of the amount.

The Hotel Facility Charge shall remain in effect until Capital Costs are fully paid, and at such time, the Hotel Facility Charge shall be reduced to an amount necessary to pay for any Capital Maintenance Costs, Operating and Maintenance Costs, Advertising Costs, and projected Extraordinary Costs. The Commission shall approve and have the sole and final determination of the amount.

c. Notice to Hotel Company

The Commission shall provide notice to each Hotel Company by December 1 of each year of the Hotel Facility Charge amount when recalculated according to Section 4.3 for the upcoming year. The Commission may waive the December 1 notice date if the Hotel Company does not provide the information required in Section 5.3 by the date specified.

SECTION 5 – PAYMENTS AND REPORTS

5.1 Hotel Facility Charges Held in Trust

A Hotel Company shall hold the Hotel Facility Charges collected in trust for the benefit of the Commission. The Hotel Facility Charges are the Commission's property and Hotel Companies acknowledge that they shall have only a possessory interest (not an equitable interest) in such Hotel Facility Charges.

5.2 Payments

The Hotel Company shall remit electronically each month's Hotel Facility Charges to the Commission by the 15th of the following month, or such other date as the Commission shall notify the Hotel Company in writing.

5.3 Reporting Requirements

Simultaneously with each monthly payment, the Hotel Company shall submit electronically to the Commission a report identifying the gross receipts attributable to room rentals and the Hotel Facility Charges separate from any other payments owed to the Commission. The report shall be in a form acceptable to the Commission.

5.4 Rent and Concession Fees

The Hotel Facility Charges collected and remitted to the Commission shall be in addition to any rent and concession fees due to the Commission under agreements between a Hotel Company and the Commission. The Hotel Facility Charges shall not be included as part of a Company's gross receipts.

5.5 Audits

In addition to any audit provisions in its lease or concession agreement with the Commission, the Commission has the authority to audit the Hotel Company's books and records with respect to Hotel Facility Charges at any time upon written notice.

5.6 Late Payment Penalty

For any amounts due under this Ordinance, the Hotel Company shall pay a penalty for late or delinquent payments of eighteen percent (18%) per annum on any past due balance calculated from the date the amount is due to the Commission until the close of the business day upon which the delinquent payment is received by the Commission.

5.7 Security Deposit

If a Hotel Company defaults on any payments or reports due under this Ordinance and does not cure the default within 10 days of receiving written notice of the default from the Commission, the Commission has the right, by written notice to the Company given at any time within ninety days of such event of default, to impose or reimpose the requirements of this section; however, the Commission may immediately impose the security deposit requirement without such 10-day notice if the Company is in default for the second time within one calendar year. In such event, the Company shall within 15 days from the date of the notice provide the Commission with a security deposit equal to the Company's past three months of Hotel Facility Charges in a form acceptable to the Commission. The Company shall maintain the security deposit in effect for 12 consecutive months during which the Company commits no event of default under this Ordinance or in any other payments due to the Commission. The Commission has the right to reimpose this requirement each time the Company commits such an event of default. The Commission's rights under this section shall be in addition to any other rights provided by agreement or by law.

SECTION 6 – TERMINATION OF HOTEL FACILITY CHARGE

6.1 Termination of Hotel Facility Charge

The Hotel Facility Charge shall abate during periods in which the Commission no longer permits use of Hotel Facilities for on-Airport lodging purposes.

If the Hotel Company's agreement with the Commission is expired or terminated or the Hotel Company abandons the property or the Hotel Facility Charge ceases according to the terms of this section, such event does not release the Company from the responsibility for payments and reports due to the Commission for customer transactions prior to the date of that event.

SECTION 7 – GENERAL PROVISIONS

7.1 Penalty

Any person violating any of the provisions of this Ordinance shall upon conviction be punished by sentence within the parameters of the maximum penalty for misdemeanors set forth in Minn. Stat. § 609.03, or as may be amended.

The penalties prescribed under this Ordinance in no way preclude the Commission from taking any other civil action authorized under the Hotel Company's agreement(s) with the Commission or by law.

7.2 Provisions Severable

If any part or parts of this Ordinance is declared unconstitutional or invalid, the remainder shall continue in effect. The Commission declares it would have passed the remaining parts of this Ordinance without the unenforceable provisions.

If for any reason the Hotel Facility Charges described in this Ordinance are declared illegal or invalid by a court of competent jurisdiction, the Hotel Company remains responsible to pay the Commission any outstanding Capital Costs. Hotel Companies shall pay the Commission an amount equivalent to one year's portion of the remaining Capital Costs on January 1 of each year according to each Hotel Company's percentage of market share among Hotel Companies on-Airport.

7.3 Notice

Any notice required by this Ordinance is sufficient if delivered in person, sent by U. S. mail to the last address on file with the Commission, or transmitted by E-mail to the last E-mail address on file with the Commission.

7.4 Effective Date

This Ordinance is effective July 1, 2017.